UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. **CASE NO: 8:18-cr-292-T-35AEP**

SOFIA REYES RIVERA

ORDER

THIS CAUSE comes before the Court for consideration of Defendant's Motion to Suppress, (Dkt. 20), and the Government's response in opposition thereto. (Dkt. 23) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court **DENIES** Defendant's Motion.

I. BACKGROUND

Defendant describes the facts relevant to the instant Motion as follows:

> On the morning of June 7, 2018, Hillsborough County Sheriff's Office (HCSO) deputies David Kennedy and Tyler Wilson initiated an investigation of a white 2002 Mitsubishi Mirage bearing Florida tag number CKFL92, in the area of 19th St. N. and Woodfern Drive in Tampa, Florida. According to Deputy Kennedy, the HCSO ha[d] received an anonymous tip regarding this vehicle having a tag that was not registered. He was instructed by HSCO Corporal Kristie Udagawa to follow up on the tip and investigate the vehicle. Upon locating the vehicle, Deputy Kennedy stated that Deputy Wilson got out of his vehicle to view the vehicle's rear license plate as the car was backed into the parking space and the tag was not readily viewable. Upon viewing the tag, the HSCO deputies confirmed the vehicle was not properly registered. Deputy Kennedy admitted that an anonymous tip regarding an unregistered tag would be unusual. Deputy Wilson stated that he was on routine patrol when he observed the white Mitsubishi Mirage parked in the rear of the New Horizon apartment complex. He confirmed via DAVID that the tag was not registered to the Mitsubishi.
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> After confirming the tag was not associated with the vehicle, Deputies

> Kennedy and Wilson situated themselves on the north and south sides of the apartment complex to surveil the vehicle. At approximately 7:23 a.m., they noticed the Mitsubishi drive out of the apartment complex, turning on to 19th St. N., heading northbound. After the deputies began to follow the vehicle, the vehicle quickly turned into an apartment complex on Woodfern Dr. Deputy Kennedy activated his lights and approached the car at the same time as Deputy Wilson and HSCO Deputy G. James arrived and approached the vehicle.
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> Sofia Rivera identified herself as the driver of the Mitsubishi and provided her valid Florida driver's license. Deputies identified the passenger as Jose Solis-Caraballo. Deputy Kennedy ordered Ms. Rivera to exit the car in order to place her under arrest for driving an unregistered motor vehicle in violation of Florida Statute § 320.02(1).
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> Deputies were not aware of any warrants for either occupant of the car. Deputy Kennedy did not have any other basis to take Ms. Rivera out of the car at that point. Deputies had not observed any other criminal conduct by Ms. Rivera at the time of her arrest, and no one from the HCSO observed Ms. Rivera or Mr. Solis-Caraballo attach the incorrect tag to the car.
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> While placing her under arrest, Deputy Kennedy grabbed Ms. River[a]'s wrist to place her against the car and, when he did so, a small, gray fabric bag fell from under her shirt. Deputy Kennedy opened this gray bag after he had secured Ms. Rivera, and he discovered a number of small baggies filled with a white substance inside. One of these bags was field tested by Deputy Wilson, with a positive response for heroin.
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> Deputy Kennedy did an inventory search of Ms. Rivera's purse after he was finished with the investigation portion of her arrest. Inside the purse he located a wad of money that deputies believe had been handed to Ms. Rivera by Mr. Solis-Caraballo. Inside this money was a single small baggie, similar to the ones found in the gray cloth bag. Deputies found no other evidence of drugs in the car. None of the searches in this case were conducted pursuant to a warrant.

(Dkt. 20 at 1–3)

Defendant was indicted on one count of knowingly and intentionally possessing with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). (Dkt. 1) The Government does not dispute Defendant's articulation of the

facts. (Dkt. 23) Accepting the Defendant's version of the facts as true, the Court finds that these facts provide sufficient information for the Court to render a decision on Defendant's Motion without an evidentiary hearing. Therefore, as an initial matter, the Court finds that Defendant's request for an evidentiary hearing is **DENIED**. Further, for the reasons that follow, Defendant's Motion is also due to be denied.

II. DISCUSSION

Defendant contends that Deputy Kennedy's warrantless arrest was illegal under the Fourth Amendment and that the Court should suppress the evidence found incident to the arrest and during the inventory search of her purse as fruit of the poisonous tree. (Dkt. 20 at 3–4) The Government responds that the arrest was permissible under the Fourth Amendment because the deputies observed Defendant commit a crime, which provides sufficient probable cause to arrest without a warrant. (Dkt. 23)

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects," and the right "against unreasonable searches and seizures." U.S. Const. amend IV. A warrantless arrest without probable cause violates the Fourth Amendment. United States v. Lyons, 403 F.3d 1248, 1253 (11th Cir.2005). Probable cause to arrest exists when "the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Id. "For probable cause to exist, both federal and Florida law say that an arrest must be objectively reasonable based on the totality of the circumstances. Id. (citation omitted)

"If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001). Florida Statute § 901.15(1) provides that "[a] law enforcement officer may arrest a person without a warrant when: (1) The person has committed a felony or misdemeanor . . . in the presence of the officer." Fla. Stat. § 901.15(1). Thus, both Supreme Court precedent and Florida law clearly provide that "a full custodial arrest is allowed when a misdemeanor has been committed." Lee v. Ferraro, 284 F.3d 1188, 1196 (11th Cir. 2002).

Defendant was told that she was being arrested for driving an unregistered motor vehicle in violation of Florida Statute § 320.02(1). Section 320.02(1) provides that "every owner or person in charge of a motor vehicle that is operated or driven on the roads of this state shall register the vehicle in this state." Fla. Stat. § 320.02(1). Defendant does not dispute that the deputies observed her driving an unregistered vehicle. Rather, Defendant contends that her arrest was unlawful because a violation of § 320.02(1) is a noncriminal traffic infraction rather than a misdemeanor, for which she should have received a citation. (Dkt. 20 at 3–4) Defendant is incorrect. Florida Statute § 320.57(1) provides that any person convicted of violating any of the provisions of chapter 320 is guilty of a second-degree misdemeanor, unless otherwise provided within the statute. Fla. Stat. § 320.57(1). Section 320.02(1) does not list a specific alternative penalty; thus, it falls under the general penalty provision of § 320.57.

Defendant points to a different section of the statute, § 320.07(3), in support of her

contention that § 320.02(1) is a noncriminal offense. (See Dkt. 20 at 4 n.2) Section 320.07(3) provides that "[t]he operation of any motor vehicle without having attached thereto a registration license plate and validation stickers" subjects the owner to the following penalty:

> Any person whose motor vehicle or mobile home registration has been expired for a period of 6 months or less commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318. However, a law enforcement officer may not issue a citation for a violation under this paragraph until midnight on the last day of the owner's birth month of the year the registration expires.

Fla. Stat. Ann. § 320.07(3)(a). The Government concedes that if Defendant's vehicle registration had been expired for six months or less, Defendant's conduct would fall within the noncriminal safe harbor of § 320.07(3)(a). (Dkt. 23 at 2 ("Rivera accurately explained that violating this statute is a misdemeanor unless the vehicle's registration has been expired for six months or less.")) However, under the facts presented, Defendant was driving an unregistered vehicle, not a vehicle with expired registration. (Dkt. 20 at 2) Defendant does not assert that her vehicle was ever registered or that such registration had been in place but had been expired less than six months before her arrest such that her conduct could fall under the safe harbor provision of § 320.07(3).

In an unreported decision rendered in the Eleventh Circuit, the panel treated an offense brought under § 320.07(3) for driving with an expired tag as a separate offense than one brought under § 320.02(1) for driving an unregistered vehicle. See United States v. Glover, 441 F. App'x 748, 751 (11th Cir. 2011)[1] ("The district court did not err

1 The Court notes that "[a]lthough an unpublished opinion is not binding on this court, it is persuasive authority. See 11th Cir. R. 36-2." United States v. Futrell, 209 F.3d 1286, 1289 (11th Cir. 2000).

in denying Glover's motion to suppress the evidence recovered from his vehicle based on his allegedly unlawful arrest. Although Officer Boros initially cited Glover under § 320.07(3) for driving without a tag, at the time of traffic stop[,] he had sufficient probable cause to support Glover's arrest for a second degree misdemeanor. Glover was driving a vehicle not registered as required by § 320.02(1); in fact, the registration had been cancelled."). Because a violation of § 320.02(1) is a misdemeanor, not merely a citable traffic infraction, and because Defendant does not dispute that the deputies observed her commit this crime, Defendant's arrest was lawful.

Defendant additionally argues that it would have been unlawful for the deputies to arrest her without a warrant for violating another section of the Florida Statutes, § 320.261, which criminalizes the conduct of "knowingly attach[ing] to any motor vehicle or mobile home any registration license plate, or . . . any validation sticker or mobile home sticker to a registration license plate, which plate or sticker was not issued and assigned or lawfully transferred to such vehicle." Fla. Stat. § 320.261. Defendant argues that the deputies should have obtained a warrant in order to arrest her for violating this provision because they did not observe her actually attach the incorrect tags to her vehicle. (Dkt. 20 at 6–7) Florida law supports Defendant's argument that the deputies would not have had probable cause to conduct an arrest for a suspected violation of § 320.261 without a warrant. See e.g., Weaver v. State, 233 So. 3d 501, 504 (Fla. 2d DCA 2017) (reversing trial court's denial of a motion to suppress because the offense for which defendant was arrested, a violation of § 320.261, "was committed and completed at the point in time when the plate was attached to the vehicle," and the officer did not observe this act").

However, Defendant does not contend that she was arrested for a violation of § 320.261, nor would it change the outcome here, since the deputies did, in fact, have probable cause to arrest her without a warrant for violating § 320.02(1).[2] "When an officer makes an arrest, which is properly supported by probable cause to arrest for a certain offense, neither his subjective reliance on an offense for which no probable cause exists nor his verbal announcements of the wrong offense vitiates the arrest." United States v. Saunders, 476 F.2d 5, 7 (5th Cir.1973).[3] Thus, since the deputies had probable cause to arrest Defendant for violating § 320.02(1), her warrantless arrest is valid and the evidence obtained from the subsequent search incident to the arrest and inventory search of her purse is not fruit of the poisonous tree.

III. CONCLUSION

Accordingly, it is hereby **ORDERED** that Defendant's Motion to Suppress, (Dkt. 20), is **DENIED**.

DONE and ORDERED in Tampa, Florida, this 29th day of January, 2019.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

2 In Weaver, Defendant was arrested for a violation of § 320.261, though she was ultimately charged with a violation of § 320.02(1), operating an unregistered vehicle. 233 So. 3d at 502. The Second District Court of Appeal found that there was no probable cause to make a warrantless arrest for a violation of § 320.261; however, the court did not undertake to determine whether the officers alternatively would have had probable cause make a warrantless arrest pursuant to § 320.02(1). Id. at 504.

3 See Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (11th Cir.1981) (adopting as binding precedent all decisions of the former Fifth Circuit issued on or before September 30, 1981).

Copies furnished to:
Counsel of Record
United States Marshal Service
United States Probation Office
United States Pretrial Office